

Aug 02, 2019

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BLOCKTREE PROPERTIES, LLC, a Washington limited liability company; CORSAIR INVESTMENTS, WA, LLC, a Washington limited liability company; CYTLINE, LLC, a Delaware limited liability company; 509 MINE, LLC, a Washington limited liability company; MIM INVESTORS, LLC, a Washington limited liability company; MINERS UNITED, LLC, a Washington limited liability company; MARK VARGAS, an individual; WEHASH TECHNOLOGY, LLP, a Washington limited liability company;

Plaintiff,

v.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY WASHINGTON, a Washington municipal corporation; TERRY BREWER, individually and in his official capacity; BOB BERND, individually and in his official capacity; DALE WALKER, individually and in his official capacity; TOM FLINT, individually and in his official capacity; LARRY SCHAAPMAN, individually and in his official capacity; DOES 1-10, managers and employees of Grant PUD, individually and in their official capacities,

Defendants.

NO: 2:18-CV-390-RMP

STIPULATED PROTECTIVE ORDER

1 BEFORE THE COURT is the parties' Stipulated Motion for a Protective
2 Order, ECF No. 93. A district court can enter a protective order upon a showing of
3 good cause. Fed. R. Civ. P. 26(c). Having reviewed the proposed order and the
4 remaining record, the Court finds that good cause exists to enter the parties'
5 proposed Protective Order. Accordingly, **IT IS HEREBY ORDERED** that the
6 parties' Stipulated Motion for a Protective Order, **ECF No. 93**, is **GRANTED**. The
7 protective order is set forth below.

8 **PROTECTIVE ORDER**

9 1. **PURPOSES AND LIMITATIONS**

10 Discovery in this action is likely to involve production of confidential,
11 proprietary, or private information for which special protection may be warranted.
12 Accordingly, the parties hereby stipulate to and petition the court to enter the
13 following Stipulated Protective Order. The parties acknowledge that this agreement
14 is consistent with Fed. R. Civ. P. 26(c). It does not confer blanket protection on all
15 disclosures or responses to discovery, the protection it affords from public disclosure
16 and use extends only to the limited information or items that are entitled to
17 confidential treatment under the applicable legal principles, and it does not
18 presumptively entitle parties to file confidential information under seal.

19 2. **"CONFIDENTIAL" MATERIAL**

20 Any party to this litigation shall have the right to designate Discovery
21 Materials as "Confidential Information" or "Confidential Customer Information"

1 pursuant to this Stipulated Protective Order, and materials designated as such will be
2 referred to as such. Materials marked “Confidential Information” or “Confidential
3 Customer Information” shall be those Discovery Materials, including any document,
4 file, portion of file, transcribed testimony, or other material, that the designating
5 party in good faith reasonably believes to comprise non-public, proprietary or
6 confidential information of the designating party. All confidential material will
7 retain the label “Confidential Information” or “Confidential Customer Information.”

8 “Confidential Customer Information” shall include the following documents
9 and tangible things produced or otherwise exchanged: (i) Public Utility District No.
10 2 of Grant County, Washington’s (the “District”) customer email addresses and
11 phone numbers; (ii) load projections, inquiries, requests, or negotiations regarding
12 service from data centers, entities referred to as data centers, customers running
13 server technology, or other similarly situated customers; and, (iii) customer
14 payments for facilities’ cost contribution.

15 “Confidential Information” shall include: (i) the personal email address, phone
16 number, Social Security number, or other personally identifiable information of any
17 individual; (ii) the non-public financial information, business projections,
18 sales/marketing plans, and customer/supplier information of any Plaintiff; and (iii)
19 any information constituting a trade secret of any Plaintiff.

20 //

21 //

1 3. SCOPE

2 This agreement protects (1) Confidential Information and Confidential
3 Customer Information (as defined above, together referred to as “Confidential
4 Material”); (2) any information copied or extracted from Confidential Material; (3)
5 all copies, excerpts, summaries, or compilations of Confidential Material; and (4)
6 any testimony, conversations, or presentations by parties or their counsel that might
7 reveal Confidential Material.

8 However, the protections conferred by this agreement do not cover
9 information that is in the public domain or becomes part of the public domain
10 through trial, through voluntary waiver, or otherwise, except as the result of
11 inadvertent or unauthorized release of Confidential Material.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 Basic Principles. A receiving party may use Confidential Material that
14 is disclosed or produced by another party or by a non-party in connection with this
15 case only for prosecuting, defending, or attempting to settle this litigation.
16 Confidential Material may be disclosed only to the categories of persons and under
17 the conditions described in this agreement. Confidential Material must be stored and
18 maintained by a receiving party at a location and in a secure manner that ensures that
19 access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of Confidential Material or Items. Unless otherwise ordered
2 by the Court or permitted in writing by the designating party, a receiving party may
3 only disclose Confidential Material to:

4 (a) the receiving party's counsel of record in this action, as well as
5 employees of counsel to whom it is reasonably necessary to disclose the information
6 for this litigation;

7 (b) the officers, directors, and employees (including in house
8 counsel) of the receiving party to whom disclosure is reasonably necessary for this
9 litigation, unless the parties agree that a particular document or material produced is
10 for "Attorney's Eyes Only" and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the "Acknowledgment and
13 Agreement to Be Bound" (Exhibit A);

14 (d) the Court, court personnel, and court reporters and their staff

15 (e) copy or imaging services retained by counsel to assist in the
16 duplication of confidential material, provided that counsel for the party retaining the
17 copy or imaging service instructs the service not to disclose any Confidential
18 Material to third parties and to immediately return all originals and copies of any
19 Confidential Material;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the "Acknowledgment and

1 Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating
2 party or ordered by the Court; pages of transcribed deposition testimony or exhibits
3 to depositions that reveal confidential material must be separately bound by the court
4 reporter and may not be disclosed to anyone except as permitted under this
5 agreement;

6 (g) the author or recipient of a document containing the information
7 or a custodian or other person who otherwise possessed or knew the information.

8 4.3 Filing Confidential Material. Before filing Confidential Material or
9 discussing or referencing such material in court filings, the filing party shall confer
10 with the designating party to determine whether the designating party will remove
11 the confidential designation, whether the document can be redacted, or whether a
12 motion to seal or stipulation and proposed order is warranted. During the meet and
13 confer process, the designating party must identify the basis for sealing the specific
14 confidential information at issue in the Confidential Material, and the filing party
15 shall include this basis in its motion to seal, along with any objection to sealing the
16 information at issue.

17 5. DESIGNATING CONFIDENTIAL MATERIAL

18 5.1 Exercise of Restraint and Care in Designating Confidential Material for
19 Protection. Each party or non-party that designates information or items for
20 protection under this agreement must take care to limit any such designation to
21 specific material that qualifies under the appropriate standards. The designating

1 party must designate for protection only those parts of material, documents, items, or
2 oral or written communications that qualify, so that other portions of the material,
3 documents, items, or communications for which protection is not warranted are not
4 swept unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper
7 purpose (e.g., to unnecessarily encumber or delay the case development process or to
8 impose unnecessary expenses and burdens on other parties) expose the designating
9 party to sanctions.

10 If it comes to a designating party's attention that information or items that it
11 designated for protection do not qualify for protection, the designating party must
12 promptly notify all other parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in
14 this agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
15 stipulated or ordered, disclosure or discovery material that qualifies for protection
16 under this agreement must be clearly so designated before or when the material is
17 disclosed or produced.

18 (a) Information in documentary form: (e.g., paper or electronic
19 documents and deposition exhibits, but excluding transcripts of depositions or other
20 pretrial or trial proceedings), the designating party must affix the phrase
21 "Confidential Customer Information" or "Confidential Information" to each page

1 that contains Confidential Material. If only a portion or portions of the material on a
2 page qualifies for protection, the producing party also must clearly identify the
3 protected portion(s) (e.g., by making appropriate markings in the margins).

(b) Testimony given in deposition or in other pretrial proceedings:

5 The parties and any participating non-parties must identify on the record, during the
6 deposition or other pretrial proceeding, all protected testimony, without prejudice to
7 their right to so designate other testimony after reviewing the transcript. Any party
8 or non-party may, within twenty (20) days after receiving the transcript of the
9 deposition or other pretrial proceeding, designate portions of the transcript, or
10 exhibits thereto, as confidential. Until the expiration of the 20-day period within
11 which such designations may be made, any part of the deposition not already
12 designated shall be treated as Confidential Material and subject to protection as
13 provided by this Order. At the expiration of the 20-day period, only such designated
14 transcript portions and exhibits shall be considered Confidential Material. If a party
15 or non-party desires to protect Confidential Material at trial, the issue should be
16 addressed during the pre-trial conference.

(c) Other tangible items: The producing party must affix in a

18 prominent place on the exterior of the container or containers in which the
19 information or item is stored the phrase “Confidential Information” or “Confidential
20 Customer Information.” If only a portion or portions of the information or item

1 warrant protection, the producing party, to the extent practicable, shall identify the
2 protected portion(s).

3 5.3 Inadvertent Failures to Designate. If any party inadvertently produces
4 or discloses any Confidential Material without marking it “Confidential Customer
5 Information” or “Confidential Information,” that party may give notice to the
6 receiving party that the information should be treated in accordance with the terms
7 of this Protective Order, and shall promptly provide the receiving party with
8 appropriately marked replacements. Within five (5) business days of the receipt of
9 the marked replacements, if the designating party so requests, the receiving party
10 shall return the previously unmarked items and all copies thereof. The inadvertent
11 disclosure shall not be deemed a waiver of confidentiality unless such designation is
12 not made within sixty (60) days of the inadvertent production or disclosure by the
13 party making the inadvertent disclosure. However, no party shall be required to treat
14 any unmarked information as Confidential Material unless it is so marked or until
15 receiving notice that the information is to be designated as “Confidential Customer
16 Information” or “Confidential Information.”

17 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

18 6.1 Timing of Challenges. Any party or non-party may challenge a
19 designation of confidentiality at any time. Unless a prompt challenge to a
20 designating party’s confidentiality designation is necessary to avoid foreseeable,
21 substantial unfairness, unnecessary economic burdens, or a significant disruption or

1 delay of the litigation, a party does not waive its right to challenge a confidentiality
2 designation by electing not to mount a challenge promptly after the original
3 designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any
5 dispute regarding confidential designations without court involvement. Any motion
6 regarding confidential designations or for a protective order must include a
7 certification, in the motion or in a declaration or affidavit, that the movant has
8 engaged in a good faith meet and confer conference with other affected parties in an
9 effort to resolve the dispute without court action. The certification must list the date,
10 manner, and participants to the conference. A good faith effort to confer requires a
11 face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
13 Court intervention, the designating party may file and serve a motion to retain
14 confidentiality under Local Civil Rule 7. The burden of persuasion in any such
15 motion shall be on the designating party. Frivolous challenges, and those made for
16 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
17 other parties) may expose the challenging party to sanctions. All parties shall
18 continue to maintain the material in question as confidential until the Court rules on
19 the challenge.

20 //

21 //

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a party is served with a subpoena, a court order issued in other litigation, or
4 a request under the Washington Public Records Act (RCW Chapter 42.56) that may
5 compel disclosure of any information or items designated in this action as
6 “Confidential Information” or “Confidential Customer Information,” that party
7 must:

- 8 (a) promptly notify the designating party in writing and include a
9 copy of the subpoena, court order, or Public Records Act request;
- 10 (b) promptly notify in writing the party who caused the subpoena or
11 order to issue in the other litigation, or that submitted the Public Records Act
12 request, that some or all of the material covered by the subpoena or order is subject
13 to this agreement. Such notification shall include a copy of this agreement; and
14 (c) cooperate with respect to all reasonable procedures sought to be
15 pursued by the designating party whose Confidential Material may be affected.

16 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

17 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
18 Confidential Material to any person or in any circumstance not authorized under this
19 agreement, the receiving party must immediately (a) notify in writing the
20 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
21 all unauthorized copies of the protected material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this agreement, and
2 (d) request that such person or persons execute the "Acknowledgment and
3 Agreement to Be Bound" that is attached hereto as Exhibit A.

4 9. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
5 **PROTECTED MATERIAL**

6 When a producing party gives notice to receiving parties that certain
7 inadvertently produced material is subject to a claim of privilege or other protection,
8 the obligations of the receiving parties are those set forth in Federal Rule of Civil
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
10 may be established in an e-discovery order or agreement that provides for production
11 without prior privilege review. The parties agree to the entry of a non-waiver order
12 under Fed. R. Evid. 502(d) as set forth herein.

13 10. **NON-TERMINATION AND RETURN OF DOCUMENTS**

14 Within 60 days after the termination of this action, including all appeals, each
15 receiving party must return all Confidential Material to the producing party,
16 including all copies, extracts and summaries thereof. Alternatively, the parties may
17 agree upon appropriate methods of destruction.

18 Notwithstanding this provision, counsel are entitled to retain one archival
19 copy of all documents filed with the Court, trial, deposition, and hearing transcripts,
20 correspondence, deposition and trial exhibits, expert reports, attorney work product,
21

1 and consultant and expert work product, even if such materials contain Confidential
2 Material.

3 The confidentiality obligations imposed by this agreement shall remain in
4 effect until a designating party agrees otherwise in writing or a court orders
5 otherwise.

6 11. MODIFICATION AND NON-WAIVER

7 This Protective Order is without prejudice to the right of any party to seek
8 relief from the Court, upon good cause shown, from any of the provisions in this
9 Protective Order.

10 This Protective Order may be modified by further order of the Court, for good
11 cause shown. The burden of persuasion for modifying this Protective Order shall
12 rest with the party seeking the modification.

13 Neither the provisions of this Protective Order nor any disclosure by any party
14 pursuant to this Protective Order, shall constitute a waiver, at any time or in any
15 other litigation, of any objection as to attorney-client or work-product privilege,
16 relevance, overbreadth, burdensomeness, or any other grounds for not producing
17 material called for, and access to such materials shall only be as provided by
18 applicable discovery rules and law.

19 Nothing herein shall preclude a producing entity from using her, his or its own
20 confidential information, documents, or materials in any manner she, he or it sees fit,

1 or from revealing such information, documents or materials to whomever she, he or
2 it chooses.

3 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
4 Order and provide copies to counsel.

5 **DATED** August 2, 2019.

6
7 *s/ Rosanna Malouf Peterson*
ROSANNA MALOUF PETERSON
8 United States District Judge
9
10
11
12
13
14
15
16
17
18
19
20
21